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Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-675

JOHN E. RING,

Petitioner,

vs.

JOHN A. WADDINGTON, Director of Motor Vehicles and STATE OF NEW JERSEY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

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COUNTER-STATEMENT OF BRIEF IN OPPOSITION

QUESTIONS INVOLVED

1. Is petitioner's cause of action barred by the prior decision on the same matter between the same parties in the State courts?

2. Were petitioner's driving privileges lawfully suspended from February 9, 1974 to December 25, 1974 with the result that the March 14, 1975 suspension was valid?

COUNTER-STATEMENT OF THE CASE

On October 1, 1972, a two-month suspension of petitioner's driving privileges, based upon the Division of Motor Vehicles' "point system" (*N.J.S.A.* 39:5-30.3; *N.J.A.C.* 13:19-10 *et seq.*) elapsed. Petitioner's driving privileges were thereafter restored

> "with the distinct understanding that if you are again convicted of a moving violation in New Jersey within a year of the above date of restoration, your driver license privilege will be suspended forthwith." Pet. 3rd Cir. App. p. 32.

The legal basis for a restoration which is made subject to suspension forthwith for a new violation is the Division's "persistent violator rule", which provides in pertinent part:

> "(a) Restoration after suspension or official warning . . . following accumulation of 12 or more points shall be with the express condition and understanding that any violation of the motor vehicle laws of New Jersey committed within a period of one year thereof may result in summary suspension of driving privileges, without hearing. . . ." N.J.A.C. 13:19-10.7.

Within ten months of the restoration of petitioner's driving privileges, petitioner committed a speeding violation in Bergen County for which he was convicted (Pet. App. p. 16). On the basis of this conviction, the foregoing regulation became operative and petitioner's driving privileges were summarily suspended by the Director in an order dated February 4, 1974, said suspension to run from February 9, 1974 to one month after receipt by the Division of his driver's license (Pet. App. p. 17).

The notice of this February 9, 1974 suspension was sent to petitioner's correct address and was not returned by the Post Office (Pet. App. p. 24). Petitioner's driver's license was not submitted to the Division and petitioner continued to drive. During this period, petitioner committed another motor vehicle violation (careless driving) for which he was convicted on May 13, 1974. On December 6, 1974 petitioner requested and was granted a hearing which was held on December 11, 1974 on the February 9, 1974 suspension. Following the hearing, the Director upheld the suspension and ordered that petitioner surrender his license for 20 days beginning December 6, 1974 (Pet. App. pp. 17, 22, 23). No appeal was taken from this decision.

On March 4, 1975, petitioner was sent a Notice of Proposed Suspension of his driving privileges for six months (Pet. App. p. 17) for operating a motor vehicle during the period of suspension running from February 9, 1974, to December 25, 1974, and for his May 13, 1974 careless driving conviction. Petitioner requested and received a hearing on March 14, 1975. The hearing officer upheld the charge of operating a vehicle during a period of suspension and suspended petitioner's driving privileges for three months, effective April 4, 1974 (Pet. App. p. 24). Petitioner appealed from this order on March 28, 1975 to the Appellate Division of the Superior Court of New Jersey, essentially attempting to collaterally attack the February 9, 1974 suspension. The Appellate Division in a *per curiam* decision rendered February 20, 1976, affirmed the suspension of petitioner's driving privileges, finding that petitioner had driven during a period of suspension, and that his challenge to the February 9, 1974 suspension was not cognizable on appeal as being untimely (Pet. App. pp. 21-23).

On June 1, 1976, the Supreme Court of New Jersey denied petitioner's petition for certification (Pet. App. p. 18). Petitioner's motion for a rehearing was denied on June 21, 1976 (Pet. App. p. 18). On June 30, 1976, petitioner petitioned this Court for a writ of *certiorari*, seeking a review of the State court's determination of his appeal from the suspension (Pet. App. p. 18). On July 1 and 15, respectively, Justices Brennan and Blackman denied Ring's first and second application for a stay.

Unsatisfied with the results of his State court appeals, and the Federal appeal therefrom, petitioner, instead of pursuing his petition for *certiorari* which he voluntarily dismissed on August 6, 1976, commenced a new action in the District Court for the District of New Jersey on August 2, 1976, seeking a review of the same suspension challenged in the State court action. On November 22, 1976, the District Court, on cross-motions for summary judgment, granted the Director's motion and denied petitioner's for failure to raise a substantial federal question and because the action was barred by *res judicata* (Pet. App. p. 16). Petitioner then took an appeal to the Court of Appeals for the Third Circuit, which affirmed the judgment of the District Court on October 5, 1977 (Pet. App. p. 28). This petition for *certiorari* followed.

ARGUMENT

The cause of action asserted by petitioner was raised and decided against petitioner in the state courts and thus the district court and the third circuit properly determined that that decision is a bar to the maintenance of the present action; since there are no meritorious constitutional issues or other issues of public importance presented by this case, the petition for a Writ of Certiorari should be denied.

Before the District Court heard this case and affirmed the Director's actions, the identical claims raised by petitioner herein had already been heard by two different hearing officers in the Division of Motor Vehicles; by the Appellate Division of the Superior Court of New Jersey; twice by the Supreme Court of New Jersey; and by two justices of this Court. Further, petitioner had a right to appeal the decision of the Appellate Division to this Court under 28 U.S.C. §1257(2), a right which he did not pursue. Petitioner cannot, under the doctrine of *res judicata*, relitigate his claims. *Restatement of Judgments* §48(1942). He presented them to the State courts which ruled against him, and he deliberately bypassed the Supreme Court of the United States, the only federal court in which he had a right to raise his claims. See *Angel v. Bullington*, 330 U.S. 183 (1947); *Rooker v. Fidelity T. Co.*, 263 U.S. 413, 416 (1923); *Coogan v. Cincinnati Bar Asso.*, 431 F.2d 1209, 1211 (6th Cir. 1970); *Brown v. Chastain*, 416 F.2d 1012 (5th Cir. 1969) *cert. den.* 397 U.S. 951 (1970); *Lasavek v. White*, 339 F.2d 861 (10th Cir. 1965); *Nongard v. Burlington Bridge Commission*, 229 F.2d 644 (3d Cir. 1956). See also *England v. Louisiana Medical Examiners*, 375 U.S. 411 (1964).

Furthermore, the sole issue raised by petitioner throughout this case involves a simple factual determination by the Director concerning whether petitioner was driving during a period of suspension. This determination was properly affirmed by the State courts, the District Court and the Third Circuit. Petitioner has not demonstrated that this factual determination was obviously erroneous. Thus, the matter warrants no further review by this Court. *Berenyi v. District Director*, 385 U.S. 630 (1967).

Petitioner's purported constitutional issue concerning the February 9, 1974 suspension, which involved the application of New Jersey's "persistent violator rule", is not meritorious. Since petitioner never appealed that suspension at the time the Director rendered his decision, his attempt to do so collaterally in this action is clearly improper. *Angel v. Bullington, supra.* Even if cognizable, the suspension was constitutional. The "persistent violator rule" authorizes suspension of driving privileges in case of a moving violation committed within one year of the date of restoration of driving privileges after a period of suspension has run. Such a suspension is merely a further result of a conviction of a moving violation along with any fine or other penalty imposed. Due process does not require a second hearing, as this Court has recently held in *Dixon v. Love*, 431 U.S. 105 (1977).

In *Dixon*, Illinois, acting under its persistent violator rule, revoked Love's driver's license without notice or a prior hearing because he had received his third suspension within a ten year period. The Illinois regulation in question permitted the summary revocation of the driver's license of any person receiving three suspensions within a ten year period. This Court upheld the summary revocation, holding that (1) the nature of a person's interest

in a driver's license did not require a prior hearing in all cases, (2) the risk of an erroneous deprivation in the absence of a prior hearing was slight, and (3) there was a substantial public interest in administrative efficiency which would be impeded by the availability of a pre-revocation hearing in every case. These same considerations apply to the New Jersey "persistent violator rule". Moreover, in the instant case, the deprivation is much slighter than that suffered by Love, since this case does not involve the permanent revocation of a license but only a three month suspension. It is therefore clear that even if petitioner's February 9, 1974 suspension was properly cognizable in this action, his challenge thereto does not raise a meritorious constitutional issue.*

Petitioner has raised no meritorious constitutional issues in his petition, nor has he presented any issues of great public importance. Furthermore, petitioner's claims have already been reviewed by the State courts, and any further review is barred by the principles of *res judicata*. Therefore, this action warrants no further review by this Court.

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* The District Court found that petitioner received adequate notice of suspension, and petitioner has not demonstrated that this factual finding is clearly erroneous. In any event, notice by ordinary mail is sufficient. *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306 (1950).

CONCLUSION

For the reasons expressed above, the petition for a writ of *certiorari* should be denied.

Respectfully submitted,

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